

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of:

Palmer Manufacturing and
Tank Incorporated
2814 West Jones Avenue
Garden City, KS 67846

)
) Docket No. CAA-7-2003-0006
)
) **CLEAN AIR ACT**
) 42 U.S.C. § 7410
)

Respondent

I. COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA, or "the Act"), 42 U.S.C. § 7413(d).
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated certain requirements of the CAA, 42 U.S.C. § 7401, *et seq.*, as set forth in Kansas Administrative Regulations (K.A.R.) 28-19-500 to 28-19-563, which are contained in the state implementation plan (SIP) for the state of Kansas, approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.
4. The Respondent is Palmer Manufacturing and Tank, Incorporated (Palmer Tank), a "person" as defined in the Act, and a Kansas corporation in good standing. Respondent's facility is located at 2814 West Jones Avenue, Garden City, Kansas

Statutory Framework

5. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and 40 C.F.R. § 52.872, the requirements of K.A.R. 28-19-500 to 28-19-563, are federally enforceable as part of the federally approved SIP for the State of Kansas. Respondent's facility at 2814 West Jones Avenue, Garden City, Kansas, is an "existing source" and a "major source" and is subject to K.A.R. 28-19-500 to 28-19-563.

Violations

6. The Complainant hereby states and alleges that Respondent has violated the CAA and the Kansas SIP as follows:

Count I

Exceeding Permit Emission Limit for Styrene

7. On June 2, 1998, the Kansas Department of Health and Environment (KDHE) issued a Class II Operating Permit (Permit No. 0550055) to Respondent, pursuant to Kansas Statutes Annotated (K.S.A.) 65-3008, and K.A.R. 28-19-540.

8. On or about April 24, 2001, a representative of the EPA conducted an inspection of the Palmer Tank facility. On or about December 27, 2001, EPA issued Palmer Tank an Information Request (Information Request) pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414(a)(1). Palmer Tank provided its response to the December 2001 Information Request by correspondence dated January 17, 2002 (Response).

9. As a result of EPA's April 24, 2001 inspection and Palmer Tank's response to EPA's Information Request, EPA has determined that for the period between August 2001 and November 2001, Palmer Tank failed to comply with Emissions Limitation Requirement #1 of its Class II operating permit, which limits Palmer Tank's allowable emissions to 10 tons of a single HAP. Palmer Tank therefore violated an applicable state implementation plan, including K.A.R. 28-19-500(a)(1), 28-19-500(b), 28-19-540 and 28-19-543, approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

10. Respondent therefore violated the requirements at K.A.R. 28-19-500(a)(1), 28-19-500(b), 28-19-540 and 28-19-543, and Section 110 of the Act, 42 U.S.C. § 7410, and is subject to civil penalties pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

Count II

Failure to Keep Monthly Records of HAP Emissions

11. The allegations of paragraphs 7 and 8 above are realleged and incorporated herein by reference.

12. As a result of EPA's April 24, 2001 inspection and Palmer Tank's response to EPA's Information Request, EPA has determined that for the period between June 1998 and November 2001, Respondent failed to keep required monthly records of its HAP emissions as specified by Recordkeeping Requirement #1 of its Class II operating permit, and therefore violated an applicable state implementation plan, including K.A.R. 28-19-501(c), approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

13. Respondent therefore violated the requirements at K.A.R. 28-19-501(c) and Section 110 of the CAA, 42 U.S.C. § 7410, and is subject to civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

Count III

Failure to Comply with Reporting Requirements

14. The allegations of paragraphs 7 and 8 above are realleged and incorporated herein by reference.

15. As a result of EPA's April 24, 2001 inspection and Palmer Tank's response to EPA's Information Request, EPA has determined Respondent failed to comply with Reporting Requirement #2 of its Class II operating permit by failing to report that it had exceeded 85% of its operational emissions limitation, and therefore violated an applicable state implementation plan, including K.A.R. 28-19-501(c)(1), approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

16. As a result of EPA's April 24, 2001 inspection and Palmer Tank's response to EPA's Information Request, EPA has determined that Palmer Tank violated Reporting Requirement #3a of its Class II operating permit by failing to report that it had exceeded the operational emissions limits of its permit, and therefore violated an applicable state implementation plan, including K.A.R. 28-19-501(c)(2)(A), approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

17. As a result of EPA's April 24, 2001 inspection and Palmer Tank's response to EPA's Information Request, EPA has determined that Palmer Tank violated Reporting Requirement #3b of its Class II operating permit by exceeding the operational limits of its permit and failing to submit a "compliance plan" designed to ensure future compliance with its permit, and therefore violated an applicable state implementation plan, specifically K.A.R. 28-19-501(c)(2)(B), approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410..

18. Respondent therefore violated the requirements at K.A.R. 28-19-501(c)(1), 28-19-501(c)(2)(A), and 28-19-501(c)(2)(B), and Section 110 of the CAA, 42 U.S.C. § 7410, and is subject to civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

Relief and Proposed Penalty

19. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes a civil penalty of up to \$27,500 per day for each violation of the Act. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the Stationary Source Civil Penalty Policy, October 25, 1991 ("Penalty Policy").

20. For the violations stated herein, it is proposed that a penalty of \$203,500 be assessed against Respondent. The actual proposed penalty was determined by calculation in accordance with the enclosed Penalty Policy, by combining the factors in the policies, including the size of respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent. The basis of the proposed penalty is as follows:

Count I:	\$110,000
Count II:	\$44,000
Count III:	\$27,500
<u>Size of Violator:</u>	<u>\$22,000</u>
Total:	\$203,500

21. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

22. The Complaint was drafted based upon the best information available to Complainant, including financial information, and in consideration of, and in accordance with, the statutory requirements of Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the enclosed Penalty Policy.

23. The proposed penalty set forth in paragraph 20 constitutes a demand only if the Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.

24. Said issues of ability to pay or other affirmative defenses relevant to a final penalty, may and should be brought to the attention of the Complainant at the earliest opportunity in this proceeding.

25. Payment of the total penalty of \$203,500 shall be made by certified or cashier's check payable to the treasure, United States of America, and shall bear the docket number and shall be remitted to:

Mellon Bank
EPA-Region VII
Regional Hearing Clerk
P.O. Box 360748M
Philadelphia, Pennsylvania 15251

II. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

26. Pursuant to Section 113(d)(2) of the CAA, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must file a written answer and request for a hearing with the Regional Hearing Clerk, United States within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- a. The circumstances or arguments that are alleged to constitute the grounds for defense:
- b. The facts that Respondent intends to place as issues; and
- c. Whether hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegation.

27. If Respondent requests a hearing, it shall be held and conducted in accordance with Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation or Suspension of Permits (40 C.F.R. Part 22). (Copy enclosed.)

28. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under the Act. A Default Order may thereafter be issued by the Regional Administrator (or his or her delegatee), and the civil penalties proposed therein shall become due and payable without further proceedings.

29. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibited any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrator Law Judge, or any person likely to advise these officials in the decision of this case.

Settlement Conference

30. Whether or not a respondent requests a hearing, a respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Mr. Howard C. Bunch, Attorney, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66106, telephone 913-551-7879.

31. A request for an informal settlement conference does not extend the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to a hearing a written Answer and request for a hearing must be filed within thirty (30) days of service of this Complaint.

32. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement and Final Order which will be issued by the Regional Administrator, United States Environmental Protection Agency, Region VII. The Issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date 10/30/02

William A. Spratlin
William A. Spratlin
Director
Air, RCRA and Toxics Division

Howard C. Bunch 10/31/02
Howard C. Bunch
Attorney
Office of Regional Counsel

Enclosures: Consolidated Rules of Practice
Clean Air Act Penalty Policy
Penalty Policy Calculation
Small Business Information Sheet
Notice of Securities and Exchange Commission Registrants' Duty To Disclose
Environmental Legal Proceedings

CERTIFICATION OF SERVICE

I certify that the original and one true copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66106; and a true and correct copy of the foregoing Complaint, Consolidated Rules of Practice, the Clean Air Act Penalty Policy, a Small Business Information Sheet and Penalty Policy Calculation, and a Notice of Securities and Exchange Commission Registrants' Duty To Disclose Environmental Legal Proceedings were mailed by certified mail, return receipt requested on this 31st day of Oct, 2002, to:

Cecil O'Brate
Registered Agent for Service
Palmer Manufacturing and Tank, Incorporated
2814 W. Jones Avenue
Garden City, KS 67846-0000

Debby White